
ENGROSSED SUBSTITUTE SENATE BILL 6112

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Financial Services, Insurance & Housing
(originally sponsored by Senators Prentice, Benton, Winsley, Keiser
and Kohl-Welles)

READ FIRST TIME 01/29/04.

1 AN ACT Relating to self-funded multiple employer welfare
2 arrangements; amending RCW 48.02.190, 48.03.060, and 48.14.0201; adding
3 a new section to chapter 48.43 RCW; adding a new section to chapter
4 48.31 RCW; adding a new section to chapter 48.99 RCW; adding a new
5 chapter to Title 48 RCW; prescribing penalties; and declaring an
6 emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
9 funded multiple employer welfare arrangement regulation act."

10 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

11 (1) Provide for the authorization and registration of self-funded
12 multiple employer welfare arrangements;

13 (2) Regulate self-funded multiple employer welfare arrangements in
14 order to ensure the financial integrity of the arrangements;

15 (3) Provide reporting requirements for self-funded multiple
16 employer welfare arrangements; and

17 (4) Provide for sanctions against self-funded multiple employer

1 welfare arrangements organized, operated, providing benefits, or
2 maintained in this state that do not comply with this chapter.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Bona fide association" means an association of employers that
6 has been in existence for a period of not less than ten years prior to
7 sponsoring a self-funded multiple employer welfare arrangement, during
8 which time the association has engaged in substantial activities
9 relating to the common interests of member employers, and that
10 continues to engage in substantial activities in addition to sponsoring
11 an arrangement. However, an association that was formed and began
12 sponsoring an arrangement prior to October 1, 1995, is not subject to
13 the requirement that the association be in existence for ten years
14 prior to sponsoring an arrangement.

15 (2) "Employer" means any person, firm, corporation, partnership,
16 business trust, legal representative, or other business entity which
17 engages in any business, industry, profession, or activity in this
18 state and employs one or more other persons or who contracts with one
19 or more persons, the essence of which is the personal labor of that
20 person or persons.

21 (3) "Health care service" means that service offered or provided by
22 health care facilities and health care providers relating to the
23 prevention, cure, or treatment of illness, injury, or disease.

24 (4) "Incurred claims" means the value of all amounts paid or
25 payable under a multiple employer welfare arrangement determined by
26 contract to be a liability with an incurred claims date during the
27 valuation period. It includes all payments during the valuation period
28 plus a reasonable estimate of unpaid claims liabilities.

29 (5) "Multiple employer welfare arrangement" means a multiple
30 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
31 does not include an arrangement, plan, program, or interlocal agreement
32 of or between any political subdivisions of this state, any federal
33 agencies, or any contractors or subcontractors with federal agencies at
34 a federal government facility within this state.

35 (6) "Qualified actuary" means an individual who:

36 (a) Is a member in good standing of the American academy of
37 actuaries; and

1 (b) Is qualified to sign statements of actuarial opinion for health
2 annual statements in accordance with the American academy of actuaries
3 qualification standards for actuaries signing the statements.

4 (7) "Self-funded multiple employer welfare arrangement" or
5 "arrangement" means a multiple employer welfare arrangement that does
6 not provide for payment of benefits under the arrangement solely
7 through a policy or policies of insurance issued by one or more
8 insurance companies licensed under this title.

9 (8) "Surplus" means the excess of the assets of a self-funded
10 multiple employer welfare arrangement over the liabilities of the
11 arrangement. The assets and liabilities should be determined in
12 accordance with the accounting practices and procedures manuals as
13 adopted by the national association of insurance commissioners, unless
14 otherwise provided by law.

15 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
16 this section, a person may not establish, operate, provide benefits, or
17 maintain a self-funded multiple employer welfare arrangement in this
18 state unless the arrangement first obtains a certificate of authority
19 from the commissioner.

20 (2) An arrangement is considered to be established, operated,
21 providing benefits, or maintained in this state if (a) one or more of
22 the employer members participating in the arrangement is either
23 domiciled in or maintains a place of business in this state, or (b) the
24 activities of the arrangement or employer members fall under the scope
25 of RCW 48.01.020.

26 (3) An arrangement established, operated, providing benefits, or
27 maintained in this state prior to December 31, 2003, has until April 1,
28 2005, to file a substantially complete application for a certificate of
29 authority. An arrangement that files a substantially complete
30 application for a certificate of authority by that date is allowed to
31 continue to operate without a certificate of authority until the
32 commissioner approves or denies the arrangement's application for a
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the reasonable satisfaction of
2 the commissioner that the following requirements have been satisfied by
3 the arrangement:

4 (1) The employers participating in the arrangement are members of
5 a bona fide association;

6 (2) The employers participating in the arrangement exercise control
7 over the arrangement, as follows:

8 (a) Subject to (b) of this subsection, control exists if the board
9 of directors of the bona fide association or the employers
10 participating in the arrangement have the right to elect at least
11 seventy-five percent of the individuals designated in the arrangement's
12 organizational documents as having control over the operations of the
13 arrangement and the individuals designated in the arrangement's
14 organizational documents in fact exercise control over the operation of
15 the arrangement; and

16 (b) The use of a third-party administrator to process claims and to
17 assist in the administration of the arrangement is not evidence of the
18 lack of exercise of control over the operation of the arrangement;

19 (3) In this state, the arrangement provides only health care
20 services;

21 (4) In this state, the arrangement provides or arranges benefits
22 for health care services in compliance with those provisions of this
23 title that mandate particular benefits or offerings and with provisions
24 that require access to particular types or categories of health care
25 providers and facilities;

26 (5) The arrangement provides health care services to not less than
27 twenty employers and not less than seventy-five employees;

28 (6) The arrangement may not solicit participation in the
29 arrangement from the general public. However, the arrangement may
30 employ licensed insurance agents who receive a commission, unlicensed
31 individuals who do not receive a commission, and may contract with a
32 licensed insurance producer who may be paid a commission or other
33 remuneration, for the purpose of enrolling and renewing the enrollments
34 of employers in the arrangement;

35 (7) The arrangement has been in existence and operated actively for
36 a continuous period of not less than ten years as of December 31, 2003,
37 except for an arrangement that has been in existence and operated

1 actively since December 31, 2000, and is sponsored by an association
2 that has been in existence more than twenty-five years; and

3 (8) The arrangement is not organized or maintained solely as a
4 conduit for the collection of premiums and the forwarding of premiums
5 to an insurance company.

6 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
7 section 5 of this act, self-funded multiple employer welfare
8 arrangements are subject to the following requirements:

9 (a) Arrangements must maintain a calendar year for operations and
10 reporting purposes;

11 (b) Arrangements must satisfy one of the following requirements:

12 (i)(A) The arrangement must deposit two hundred thousand dollars
13 with the commissioner to be used for the payment of claims in the event
14 that the arrangement becomes insolvent; and

15 (B) The arrangement must submit to the commissioner a written plan
16 of operation that, in the reasonable discretion of the commissioner,
17 ensures the financial integrity of the arrangement; or

18 (ii) The arrangement demonstrates to the reasonable satisfaction of
19 the commissioner the ability of the arrangement to remain financially
20 solvent, for which purpose the commissioner may consider:

21 (A) The pro forma financial statements of the arrangement;

22 (B) The types and levels of excess of loss insurance coverage,
23 including the attachment points of the coverage and whether the points
24 are reflected as annual or monthly levels;

25 (C) Whether a deposit is required for each employee covered under
26 the arrangement equal to at least one month's cost of providing
27 benefits under the arrangement;

28 (D) The experience of the individuals who will be involved in the
29 management of the arrangement, including employees, independent
30 contractors, and consultants; and

31 (E) Other factors as reasonably determined by the commissioner to
32 be relevant to a determination of whether the arrangement is able to
33 operate in a financially solvent manner.

34 (2) The commissioner may require that the articles, bylaws,
35 agreements, trusts, or other documents or instruments describing the
36 rights and obligations of the employers, employees, and beneficiaries

1 of the arrangement provide that employers participating in the
2 arrangement are subject to pro rata assessment for all liabilities of
3 the arrangement.

4 (3) Self-funded multiple employer welfare arrangements with fewer
5 than one thousand covered persons are required to have aggregate stop
6 loss coverage, with an attachment point of one hundred twenty-five
7 percent of expected claims. If the arrangement is allowed to assess
8 the participating employers to cover actual or projected claims in
9 excess of plan assets, then the attachment point shall be increased by
10 the amount of the allowable assessments. If the required attachment
11 point exceeds one hundred seventy-five percent of expected claims,
12 aggregate stop loss coverage shall be waived. Arrangements with one
13 thousand covered persons or more are not required to have aggregate
14 stop loss coverage.

15 (4) The arrangement must demonstrate continued compliance with
16 respect to the conditions set forth in this section as a condition of
17 receiving and maintaining a certificate of authority. The commissioner
18 may waive continued compliance with respect to the conditions in this
19 section at any time after the commissioner has granted a certificate of
20 authority to an arrangement.

21 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
22 arrangement must apply for a certificate of authority on a form
23 prescribed by the commissioner and must submit the application,
24 together with the following documents, to the commissioner:

25 (1) A copy of all articles, bylaws, agreements, trusts, or other
26 documents or instruments describing the rights and obligations of the
27 employers, employees, and beneficiaries of the arrangement;

28 (2) A copy of the summary plan description or summary plan
29 descriptions of the arrangement, including those filed or required to
30 be filed with the United States department of labor, together with any
31 amendments to the description;

32 (3) Evidence of coverage of or letters of intent to participate
33 executed by at least twenty employers providing allowable benefits to
34 at least seventy-five employees;

35 (4) A copy of the arrangement's most recent year's financial
36 statements that must include, at a minimum, a balance sheet, an income
37 statement, a statement of changes in financial position, and an

1 actuarial opinion signed by a qualified actuary stating that the unpaid
2 claim liability of the arrangement satisfies the standards under this
3 title;

4 (5) Proof that the arrangement maintains or will maintain fidelity
5 bonds required by the United States department of labor under the
6 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
7 seq.;

8 (6) A copy of any excess of loss insurance coverage policies
9 maintained or proposed to be maintained by the arrangement;

10 (7) Biographical reports on forms prescribed by the national
11 association of insurance commissioners evidencing the general
12 trustworthiness and competence of each individual who is serving or who
13 will serve as an officer, director, trustee, employee, or fiduciary of
14 the arrangement;

15 (8) Fingerprint cards and current fees payable to the Washington
16 state patrol to perform a state and national criminal history
17 background check of any person who exercises control over the financial
18 dealings and operations of the self-funded multiple employer welfare
19 arrangement, including collection of employer contributions, investment
20 of assets, payment of claims, rate setting, and claims adjudication.
21 The fingerprints and any additional information may be submitted to the
22 federal bureau of investigation and any results of the check must be
23 returned to the office of the insurance commissioner. The results may
24 be disseminated to any governmental agency or entity authorized to
25 receive them; and

26 (9) A statement executed by a representative of the arrangement
27 certifying, to the best knowledge and belief of the representative,
28 that:

29 (a) The arrangement is in compliance with section 5 of this act;

30 (b) The arrangement is in compliance with the requirements of the
31 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
32 seq., or a statement of any requirements with which the arrangement is
33 not in compliance and a statement of proposed corrective actions; and

34 (c) The arrangement is in compliance with sections 8 and 9 of this
35 act.

36 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
37 arrangements must maintain continuously a surplus equal to at least ten

1 percent of the next twelve months projected incurred claims or two
2 million dollars, whichever is greater. The commissioner may proceed
3 against self-funded multiple employer welfare arrangements that fail to
4 maintain the level of surplus required by this section in any manner
5 that the commissioner is authorized to proceed against a health care
6 service contractor that failed to maintain minimum net worth.

7 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
8 arrangement must establish and maintain contribution rates for
9 participation under the arrangement that satisfy either of the
10 following requirements:

11 (1) Contribution rates must equal or exceed the sum of projected
12 incurred claims for the year, plus all projected costs of operation of
13 the arrangement for the year, plus an amount equal to any deficiency in
14 the surplus of the arrangement for the prior year, minus an amount
15 equal to the surplus of the arrangement in excess of the minimum
16 required level of surplus; or

17 (2) Contribution rates must equal or exceed a funding level
18 established by a report prepared by a qualified actuary.

19 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
20 application for a certificate of authority within one hundred eighty
21 days of the date that a completed application, together with the items
22 designated in section 7 of this act, is submitted to the commissioner.

23 (2) The commissioner shall grant the application of an arrangement
24 that satisfies the applicable requirements of sections 5 through 9 of
25 this act.

26 (3) The commissioner shall deny the application of an arrangement
27 that does not satisfy the applicable requirements of sections 5 through
28 9 of this act. Denial of an application for a certificate of authority
29 is subject to appeal under chapter 34.05 RCW.

30 (4) A certificate of authority granted to an arrangement is
31 effective unless revoked by the commissioner under section 12 of this
32 act.

33 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
34 arrangement must comply with the reporting requirements of this
35 section.

1 (2) Every arrangement holding a certificate of authority from the
2 commissioner must file its financial statements as required by this
3 title and by the commissioner in accordance with the accounting
4 practices and procedures manuals as adopted by the national association
5 of insurance commissioners, unless otherwise provided by law.

6 (3) Every arrangement must comply with the provisions of chapters
7 48.12 and 48.13 RCW.

8 (4) Every arrangement holding a certificate of authority shall,
9 annually, before the first day of March, file with the commissioner a
10 true statement of its financial condition, transactions, and affairs as
11 of the thirty-first day of December of the preceding year. The
12 statement forms must be those forms approved by the national
13 association of insurance commissioners for health insurance. The
14 statement must be verified by the oaths of at least two officers of the
15 arrangement. Additional information may be required by this title or
16 by the request of the commissioner.

17 (5) Every arrangement must report their annual and other statements
18 in the same manner required of other insurers by rule of the
19 commissioner.

20 (6) The arrangement must file with the commissioner a copy of the
21 arrangement's internal revenue service form 5500 together with all
22 attachments to the form, at the time required for filing the form.

23 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
24 against a self-funded multiple employer welfare arrangement that fails
25 to comply with this chapter. The maximum fine may not exceed ten
26 thousand dollars for each violation.

27 (2) The commissioner may issue a notice of intent to revoke the
28 certificate of authority of a self-funded multiple employer welfare
29 arrangement that fails to comply with section 8, 9, or 11 of this act.
30 If, within sixty days of receiving notice under this subsection, the
31 arrangement fails to file with the commissioner a plan to bring the
32 arrangement into compliance with section 8, 9, or 11 of this act, the
33 commissioner may revoke the arrangement's certificate of authority. A
34 revocation of a certificate of authority is subject to appeal under
35 chapter 34.05 RCW.

36 (3) An arrangement that fails to maintain the level of surplus

1 required by section 8 of this act is subject to the sanctions
2 authorized in RCW 48.44.160 through 48.44.166.

3 NEW SECTION. **Sec. 13.** A self-funded multiple employer welfare
4 arrangement organized, operated, providing benefits, or maintained in
5 this state without a certificate of authority is in violation of this
6 title.

7 NEW SECTION. **Sec. 14.** Each policy issued by a self-funded
8 multiple employer welfare arrangement must contain, in ten-point type
9 on the front page and the declaration page, the following notice:

10 "NOTICE

11 This policy is issued by a self-funded multiple employer welfare
12 arrangement. A self-funded multiple employer welfare arrangement may
13 not be subject to all of the insurance laws and regulations of your
14 state. State insurance insolvency guaranty funds are not available for
15 a self-funded multiple employer welfare arrangement."

16 NEW SECTION. **Sec. 15.** A self-funded multiple employer welfare
17 arrangement is subject to RCW 48.43.300 through 48.43.370, the
18 rehabilitation provisions under chapter 48.31 RCW, and chapter 48.99
19 RCW.

20 NEW SECTION. **Sec. 16.** (1) The commissioner may make an
21 examination of the operations of any self-funded multiple employer
22 welfare arrangement as often as he or she deems necessary in order to
23 carry out the purposes of this chapter.

24 (2) Every self-funded multiple employer welfare arrangement shall
25 submit its books and records relating to its operation for financial
26 condition and market conduct examinations and in every way facilitate
27 them. For the purpose of examinations, the commissioner may issue
28 subpoenas, administer oaths, and examine the officers and principals of
29 the multiple employer welfare arrangement.

30 (3) The commissioner may elect to accept and rely on audit reports
31 made by an independent certified public accountant for the self-funded
32 multiple employer welfare arrangement in the course of that part of the
33 commissioner's examination covering the same general subject matter as

1 the audit. The commissioner may incorporate the audit report in his or
2 her report of the examination.

3 (4)(a) The commissioner may also examine any affiliate of the self-
4 funded multiple employer welfare arrangement. An examination of an
5 affiliate is limited to the activities or operations of the affiliate
6 that may impact the financial position of the arrangement.

7 (b) For the purposes of this section, "affiliate" has the same
8 meaning as defined in RCW 48.31C.010.

9 (5) Whenever an examination is made, all of the provisions of
10 chapter 48.03 RCW not inconsistent with this chapter shall be
11 applicable. In lieu of making an examination himself or herself, the
12 commissioner may, in the case of a foreign self-funded multiple
13 employer welfare arrangement, accept an examination report of the
14 applicant by the regulatory official in its state of domicile. In the
15 case of a domestic self-funded multiple employer welfare arrangement,
16 the commissioner may accept an examination report of the applicant by
17 the regulatory official of a state that has already licensed the
18 arrangement.

19 NEW SECTION. **Sec. 17.** This chapter does not apply to:

- 20 (1) Single employer entities;
- 21 (2) Taft-Hartley plans; or
- 22 (3) Self-funded multiple employer welfare arrangements that do not
23 provide coverage for health care services.

24 NEW SECTION. **Sec. 18.** Participant contributions used to determine
25 the taxable amounts in this state under RCW 48.14.0201 shall be
26 determined in the same manner as premiums taxable in this state are
27 determined under RCW 48.14.090.

28 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.43 RCW
29 to be codified between RCW 48.43.300 and 48.43.370 to read as follows:

30 A self-funded multiple employer welfare arrangement, as defined in
31 section 3 of this act, is subject to the same RBC reporting
32 requirements as a domestic carrier under RCW 48.43.300 through
33 48.43.370.

1 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.31 RCW
2 to read as follows:

3 A self-funded multiple employer welfare arrangement, as defined in
4 section 3 of this act, is an insurer under this chapter.

5 NEW SECTION. **Sec. 21.** A new section is added to chapter 48.99 RCW
6 to read as follows:

7 A self-funded multiple employer welfare arrangement, as defined in
8 section 3 of this act, is an insurer under this chapter.

9 **Sec. 22.** RCW 48.02.190 and 2003 1st sp.s. c 25 s 923 are each
10 amended to read as follows:

11 (1) As used in this section:

12 (a) "Organization" means every insurer, as defined in RCW
13 48.01.050, having a certificate of authority to do business in this
14 state and every health care service contractor or multiple employer
15 welfare arrangement registered to do business in this state. "Class
16 one" organizations shall consist of all insurers as defined in RCW
17 48.01.050. "Class two" organizations shall consist of all
18 organizations registered under provisions of chapter 48.44 RCW. "Class
19 three" organizations shall consist of self-funded multiple employer
20 welfare arrangements as defined in section 3 of this act.

21 (b)(i) "Receipts" means ((+i+)) (A) net direct premiums consisting
22 of direct gross premiums, as defined in RCW 48.18.170, paid for
23 insurance written or renewed upon risks or property resident, situated,
24 or to be performed in this state, less return premiums and premiums on
25 policies not taken, dividends paid or credited to policyholders on
26 direct business, and premiums received from policies or contracts
27 issued in connection with qualified plans as defined in RCW 48.14.021,
28 and ((+ii+)) (B) prepayments to health care service contractors as set
29 forth in RCW 48.44.010(3) or participant contributions to self-funded
30 multiple employer welfare arrangements as defined in section 3 of this
31 act less experience rating credits, dividends, prepayments returned to
32 subscribers, and payments for contracts not taken.

33 (ii) Participant contributions, under chapter 48.-- RCW (sections
34 1 through 18 of this act), used to determine the receipts in this state
35 under this section shall be determined in the same manner as premiums
36 taxable in this state are determined under RCW 48.14.090.

1 (2) The annual cost of operating the office of insurance
2 commissioner shall be determined by legislative appropriation. A pro
3 rata share of the cost shall be charged to all organizations. Each
4 class of organization shall contribute sufficient in fees to the
5 insurance commissioner's regulatory account to pay the reasonable
6 costs, including overhead, of regulating that class of organization.

7 (3) Fees charged shall be calculated separately for each class of
8 organization. The fee charged each organization shall be that portion
9 of the cost of operating the insurance commissioner's office, for that
10 class of organization, for the ensuing fiscal year that is represented
11 by the organization's portion of the receipts collected or received by
12 all organizations within that class on business in this state during
13 the previous calendar year: PROVIDED, That the fee shall not exceed
14 one-eighth of one percent of receipts: PROVIDED FURTHER, That the
15 minimum fee shall be one thousand dollars.

16 (4) The commissioner shall annually, on or before June 1, calculate
17 and bill each organization for the amount of its fee. Fees shall be
18 due and payable no later than June 15 of each year: PROVIDED, That if
19 the necessary financial records are not available or if the amount of
20 the legislative appropriation is not determined in time to carry out
21 such calculations and bill such fees within the time specified, the
22 commissioner may use the fee factors for the prior year as the basis
23 for the fees and, if necessary, the commissioner may impose
24 supplemental fees to fully and properly charge the organizations. The
25 penalties for failure to pay fees when due shall be the same as the
26 penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees
27 required by this section are in addition to all other taxes and fees
28 now imposed or that may be subsequently imposed.

29 (5) All moneys collected shall be deposited in the insurance
30 commissioner's regulatory account in the state treasury which is hereby
31 created.

32 (6) Unexpended funds in the insurance commissioner's regulatory
33 account at the close of a fiscal year shall be carried forward in the
34 insurance commissioner's regulatory account to the succeeding fiscal
35 year and shall be used to reduce future fees. During the 2003-2005
36 fiscal biennium, the legislature may transfer from the insurance
37 commissioner's regulatory account to the state general fund such
38 amounts as reflect excess fund balance in the account.

1 **Sec. 23.** RCW 48.03.060 and 1995 c 152 s 2 are each amended to read
2 as follows:

3 (1) Examinations within this state of any insurer or self-funded
4 multiple employer welfare arrangement as defined in section 3 of this
5 act domiciled or having its home offices in this state, other than a
6 title insurer, made by the commissioner or the commissioner's examiners
7 and employees shall, except as to fees, mileage, and expense incurred
8 as to witnesses, be at the expense of the state.

9 (2) Every other examination, whatsoever, or any part of the
10 examination of any person domiciled or having its home offices in this
11 state requiring travel and services outside this state, shall be made
12 by the commissioner or by examiners designated by the commissioner and
13 shall be at the expense of the person examined; but a domestic insurer
14 shall not be liable for the compensation of examiners employed by the
15 commissioner for such services outside this state.

16 (3) When making an examination under this chapter, the commissioner
17 may retain attorneys, appraisers, independent actuaries, independent
18 certified public accountants, or other professionals and specialists as
19 examiners, the cost of which shall be borne by the person who is the
20 subject of the examination, except as provided in subsection (1) of
21 this section.

22 (4) The person examined and liable therefor shall reimburse the
23 state upon presentation of an itemized statement thereof, for the
24 actual travel expenses of the commissioner's examiners, their
25 reasonable living expense allowance, and their per diem compensation,
26 including salary and the employer's cost of employee benefits, at a
27 reasonable rate approved by the commissioner, incurred on account of
28 the examination. Per diem salary and expenses for employees examining
29 insurers domiciled outside the state of Washington shall be established
30 by the commissioner on the basis of the National Association of
31 Insurance Commissioner's recommended salary and expense schedule for
32 zone examiners, or the salary schedule established by the Washington
33 personnel resources board and the expense schedule established by the
34 office of financial management, whichever is higher. A domestic title
35 insurer shall pay the examination expense and costs to the commissioner
36 as itemized and billed by the commissioner.

37 The commissioner or the commissioner's examiners shall not receive
38 or accept any additional emolument on account of any examination.

1 (5) Nothing contained in this chapter limits the commissioner's
2 authority to terminate or suspend any examination in order to pursue
3 other legal or regulatory action under the insurance laws of this
4 state. Findings of fact and conclusions made pursuant to any
5 examination are prima facie evidence in any legal or regulatory action.

6 **Sec. 24.** RCW 48.14.0201 and 1998 c 323 s 1 are each amended to
7 read as follows:

8 (1) As used in this section, "taxpayer" means a health maintenance
9 organization((~~τ~~)) as defined in RCW 48.46.020, ((~~ϕ~~)) a health care
10 service contractor((~~τ~~)) as defined in RCW 48.44.010, or a self-funded
11 multiple employer welfare arrangement as defined in section 3 of this
12 act.

13 (2) Each taxpayer shall pay a tax on or before the first day of
14 March of each year to the state treasurer through the insurance
15 commissioner's office. The tax shall be equal to the total amount of
16 all premiums and prepayments for health care services received by the
17 taxpayer during the preceding calendar year multiplied by the rate of
18 two percent.

19 (3) Taxpayers shall prepay their tax obligations under this
20 section. The minimum amount of the prepayments shall be percentages of
21 the taxpayer's tax obligation for the preceding calendar year
22 recomputed using the rate in effect for the current year. For the
23 prepayment of taxes due during the first calendar year, the minimum
24 amount of the prepayments shall be percentages of the taxpayer's tax
25 obligation that would have been due had the tax been in effect during
26 the previous calendar year. The tax prepayments shall be paid to the
27 state treasurer through the commissioner's office by the due dates and
28 in the following amounts:

29 (a) On or before June 15, forty-five percent;

30 (b) On or before September 15, twenty-five percent;

31 (c) On or before December 15, twenty-five percent.

32 (4) For good cause demonstrated in writing, the commissioner may
33 approve an amount smaller than the preceding calendar year's tax
34 obligation as recomputed for calculating the health maintenance
35 organization's, health care service contractor's, self-funded multiple
36 employer welfare arrangement's or certified health plan's prepayment
37 obligations for the current tax year.

1 (5) Moneys collected under this section shall be deposited in the
2 general fund through March 31, 1996, and in the health services account
3 under RCW 43.72.900 after March 31, 1996.

4 (6) The taxes imposed in this section do not apply to:

5 (a) Amounts received by any taxpayer from the United States or any
6 instrumentality thereof as prepayments for health care services
7 provided under Title XVIII (medicare) of the federal social security
8 act.

9 (b) Amounts received by any health care service contractor, as
10 defined in RCW 48.44.010, as prepayments for health care services
11 included within the definition of practice of dentistry under RCW
12 18.32.020.

13 (c) Participant contributions to self-funded multiple employer
14 welfare arrangements that are not taxable in this state.

15 (7) Beginning January 1, 2000, the state does hereby preempt the
16 field of imposing excise or privilege taxes upon taxpayers and no
17 county, city, town, or other municipal subdivision shall have the right
18 to impose any such taxes upon such taxpayers. This subsection shall be
19 limited to premiums and payments for health benefit plans offered by
20 health care service contractors under chapter 48.44 RCW (~~and~~), health
21 maintenance organizations under chapter 48.46 RCW, and self-funded
22 multiple employer welfare arrangements as defined in section 3 of this
23 act. The preemption authorized by this subsection shall not impair the
24 ability of a county, city, town, or other municipal subdivision to
25 impose excise or privilege taxes upon the health care services directly
26 delivered by the employees of a health maintenance organization under
27 chapter 48.46 RCW.

28 (8) The taxes imposed by this section apply to a self-funded
29 multiple employer welfare arrangement only in the event that they are
30 not preempted by the employee retirement income security act of 1974,
31 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
32 commissioner shall initially request an advisory opinion from the
33 United States department of labor or obtain a declaratory ruling from
34 a federal court on the legality of imposing state premium taxes on
35 these arrangements before assessing the taxes. If the taxes are not
36 preempted by federal law, the taxes provided for in this section become
37 effective on the first day of March following the issuance of a

1 certificate of authority and shall not be retroactively applied to any
2 period occurring before the arrangement receives a certificate of
3 authority.

4 NEW SECTION. Sec. 25. Sections 1 through 18 of this act
5 constitute a new chapter in Title 48 RCW.

6 NEW SECTION. Sec. 26. If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. Sec. 27. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately.

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